

AUTHORIZING AND DIRECTING THE SECRETARY OF THE INTERIOR TO CONVEY TO DAVID PETERS, OR TO HIS HEIRS OR ASSIGNS, TITLE TO LAND HELD BY THE UNITED STATES IN TRUST FOR HIM

FEBRUARY 16, 1956.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. ENGLE, from the Committee on Interior and Insular Affairs, submitted the following

R E P O R T

[To accompany H. R. 8607]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 8607) to authorize and direct the Secretary of the Interior to convey to David Peters, or to his heirs or assigns, title to land held by the United States in trust for him, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

The purpose of H. R. 8607, introduced by Congressman Engle, is to authorize and direct the Secretary of the Interior to convey to David Peters, or to his heirs or assigns, title to 18½ acres of land in California now held by the United States in trust for him.

Mr. David Peters, an Indian of the Hoopa Valley Reservation in California, is legally competent in the judgment of spokesmen for the Department of the Interior to manage his own affairs and has applied for an unrestricted title to these 18½ acres. The land was originally patented in 1915 pursuant to a mineral entry to two non-Indians. At the time of the issuance of the patent, Indian Pete, an ancestor of Mr. Peters, had filed an application for patent to the land, but by administrative error Indian Pete's application was overlooked. The Federal Government reacquired title to the land in 1943 through a bargain and sale deed executed by the successors in interest of the original non-Indian patentees in settlement of litigation that was initiated by the United States to exclude the land claimed by Indian Pete from the original patent. The title was subsequently conveyed in trust to Mr. Peters, but because of the manner in which the trust

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title was acquired there is no present statutory authority for the conveyance of the title or for the issuance of an order removing restrictions.

The executive communication from the Secretary of the Interior dated October 10, 1955, is as follows:

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., October 10, 1955.

Hon. SAM RAYBURN,

Speaker of the House of Representatives,

Washington, D. C.

MY DEAR MR. SPEAKER: Enclosed herewith is a draft of a proposed bill, to authorize and direct the Secretary of the Interior to convey to David Peters, or to his heirs or assigns, title to land held by the United States in trust for him.

We recommend that the bill be referred to the appropriate committee, and that it be enacted.

The bill authorizes and directs the Secretary of the Interior to convey to David Peters, an Indian of the Hoopa Valley Reservation, or to his heirs or assigns, title to 18 $\frac{3}{4}$ acres of land which the United States holds in trust for him. The land was originally patented in 1915, pursuant to a mineral entry, to Peter P. Hammer and Jacob Kahlke. At the time the patent was issued, however, an application for a patent for the same land by Indian Pete was pending, and by administrative error the Indian application was overlooked. The United States reacquired title to the land in 1943 by a bargain and sale deed executed by the successors in interest of Hammer and Kahlke in settlement of litigation that was initiated by the United States to exclude the land claimed by Indian Pete from the original patent. The title was conveyed to the United States in trust for David Peters, who is the only surviving heir of Indian Pete.

David Peters is competent to handle his own affairs and has applied for an unrestricted title to the land. Because of the manner in which the trust title was acquired, however, there is no present statutory authority for the conveyance of title to the Indian or for the issuance of an order removing restrictions.

There is enclosed a copy of a memorandum dated July 11, 1955, from the Acting Assistant Solicitor, Indian Legal Activities, to the Commissioner of Indian Affairs which contains a more detailed statement of the facts.

The Bureau of the Budget has advised us that there is no objection to the submission of the proposed legislation.

Sincerely yours,

FRED G. AANDAHL,
Acting Secretary of the Interior.

JULY 11, 1955.

MEMORANDUM

To: Commissioner of Indian Affairs.

From: Acting Assistant Solicitor, Indian Legal Activities.

Subject: Recommendation that the Department of the Interior submit to the Congress proposed legislation which would authorize and direct the issuance to David Peters, his heirs or assigns, a patent in fee to certain lands.

Reference is made to the memorandum of March 17, 1955, from the Commissioner of Indian Affairs, wherein a request is made for an opinion as to whether or not an order removing restrictions from certain land is sufficient to vest legal title in the cestui que trust, and if not, instructions as to the method to be followed to divest legal title from the United States and place it in David Peters. There are involved a total of 18 $\frac{3}{4}$ acres described as follows:

The NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, sec. 15, 10 acres; that part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of sec. 15 lying east of the center of the south fork of the Trinity River, approximately 7 acres; that portion of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of sec. 15, described as follows: Beginning at the NW $\frac{1}{4}$ corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of sec. 15, thence due west 120 feet, thence due south 660 feet, thence due east 120 feet, thence due north 660 feet to the point of beginning, approximately 1 $\frac{3}{4}$ acres.

The above-described land, within the Trinity National Forest in California, was in 1915 and had for a long time prior thereto been occupied by Indian Pete,

a member of the Hoopa Valley Tribe, and his wife, Julia Pete. By letter dated May 4, 1914, the Secretary of Agriculture transmitted to the Secretary of the Interior an application of Indian Pete, under the act of June 25, 1910, for allotment of lands within the Trinity National Forest, Calif.

The Office of the Commissioner of Indian Affairs suggested to Indian Pete that he amend his application in certain particulars. Indian Pete did amend his application as suggested, and by letter dated November 24, 1914, the superintendent, Hoopa Valley School, submitted the amended application to the Commissioner of Indian Affairs.

It seems that on August 27, 1915, a patent for mineral entry was issued, based upon an application filed March 20, 1913, by Peter P. Hammer and Jacob Kahlke, and this embracea, with other lands, that land applied for by Indian Pete. Further, it appears from material of record that a request by the Office of the Commissioner of Indian Affairs for withholding of patent pending a decision on Indian Pete's application was overlooked and, otherwise, the patent to Hammer and Kahlke probably would not have been issued. As of this time, rights in and to the land in question have been in dispute for about 40 years.

On May 7, 1942, the United States attorney for the northern district of California filed a complaint against the Swanson Mining Corp., who had acquired whatever rights that Hammer and Kahlke secured under their patent. The complaint, brought in the name of the United States, in its own right and as guardian of its Indian wards, sought a modification of the patent in question to exclude therefrom lands now claimed by David Peters, successor to the rights of Indian Pete. Indian Pete, and his wife, Julia, both died, one a few days later than the other, in 1917; their surviving heirs were our petitioner, David Peters, and his brother William Peters. The area director, Bureau of Indian Affairs, by letter dated June 22, 1955, has reported that his office has no probate findings for William Peters, brother of David Peters. David Peters has stated: "My brother, Willy, was not married; he died in 1934 and was buried at Hoopa Reservation Cemetery."

The Swanson Mining Corp., in settlement of the claim asserted by the United States, made, on October 16, 1943, a bargain and sale deed to the United States in trust for David Peters of the land in question. There is recited in the deed the understanding that title to a described portion of the land comprising 1½ acres is possessory only. It would appear, however, that the United States now has full title to the 1½ acres as well as the remainder of the 18¾ acres described in the deed from the corporation.

David Peters has applied for and received an order dated July 24, 1953, which was intended to remove restrictions and enable David Peters to alienate the land. Negotiations for sale have been considered by a title company, which has questioned the validity of the order removing restrictions and has refused to pass title unless either (1) a fee patent is issued to the Indian owner; or (2) statutory authority for the order removing restrictions is presented.

From a careful consideration of all available material and a review of the law, it is my opinion that David Peters is entitled to have legal title to the 18¾ acres of land and the fixtures thereon; that the order removing restrictions cannot operate to transfer legal title from the United States to David Peters; that there is no statutory provision which would authorize issuance to David Peters of a fee patent; and that in order for David Peters to acquire a good legal title or fee patent which will not be questioned, it will be necessary to obtain an act of Congress authorizing and directing the Secretary of the Interior to issue to David Peters, his heirs or assigns, a patent in fee to the land in question.

I am sending herewith a proposed memorandum addressed to the legislative counsel which, if you approve and sign, will, I believe, result in legislation that will solve the problem which you have presented.

(Signed) William V. Kastler,
(Typed) WILLIAM V. KASTLER,
Acting Assistant Solicitor, Indian Legal Activities.

The Committee on Interior and Insular Affairs recommends enactment of H. R. 8607.



